

## § 80.1358

year being reviewed with the report to EPA.

(4) If the refinery or importer had a credit deficit for both the previous year and the year being reviewed, report this fact as a finding.

### VIOLATIONS AND PENALTIES

#### **§ 80.1358 What acts are prohibited under the gasoline benzene program?**

No person shall—

(a)(1) Produce or import gasoline subject to this subpart that does not comply with the applicable benzene standards under § 80.1230.

(2) Fail to meet any other requirements of this subpart.

(b) Cause another person to commit an act in violation of paragraph (a) of this section.

#### **§ 80.1359 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?**

(a) Compliance with the benzene standards of this subpart shall be determined based on the benzene concentration of the gasoline, measured using the methodologies specified in § 80.46(e), and other allowable adjustments. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the benzene concentration of the gasoline if the evidence or information is relevant to whether the benzene concentration of the gasoline would have been in compliance with the standard if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in § 80.46(e), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the benzene standards, and determinations of liability for any violation of this subpart, may be based on information from any source or location. Such information may include, but is not limited to, business records and commercial documents.

## 40 CFR Ch. I (7–1–12 Edition)

#### **§ 80.1360 Who is liable for violations under the gasoline benzene program?**

(a) The following persons are liable for violations of prohibited acts:

(1) Any refiner or importer that violates § 80.1358(a) is liable for the violation.

(2) Any person that causes another party to violate § 80.1358(a) is liable for a violation of § 80.1358(b).

(3) Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(4) Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or a facility that is owned by the joint owners, or a facility that is committed by the joint venture operation or any of the joint owners of the facility.

(b) Any person who violates § 80.1358 is liable for the violation.

#### **§ 80.1361 What penalties apply under the gasoline benzene program?**

(a) Any person liable for a violation under § 80.1360 is subject to civil penalties as specified in sections 205 and 211(d) of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.1358(a) and (b) for a violation of the applicable benzene standards or causing another person to violate the requirements during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.1360(b) for a failure to fulfill any requirement of credit generation, transfer, use, banking, or deficit carry-forward correction is subject to a separate violation for each and every day in the averaging period in which invalid credits are generated, banked, transferred or used.

(c) Any person liable under § 80.1360(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

## FOREIGN REFINERS

**§ 80.1363 What are the additional requirements under this subpart for gasoline produced at foreign refineries?**(a) *Definitions.*

(1) A *foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as “the United States”).

(2) A *foreign refiner* is a person that meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Benzene-FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery benzene baseline under § 80.1285, has been approved as a small refiner under § 80.1340, or has been granted temporary relief under § 80.1335, and that is imported into the United States.

(4) *Non-Benzene-FRGAS* means

(i) Gasoline meeting any of the conditions specified in paragraph (a)(3) of this section that is not imported into the United States.

(ii) Gasoline meeting any of the conditions specified in paragraph (a)(3) of this section during a year when the foreign refiner has opted to not participate in the Benzene-FRGAS program under paragraph (c)(3) of this section.

(iii) Gasoline produced at a foreign refinery that has not been assigned an individual refinery benzene baseline under § 80.1285, or that has not been approved as a small refiner under § 80.1340, or that has not been granted temporary relief under § 80.1335.

(5) *Certified Benzene-FRGAS* means Benzene-FRGAS the foreign refiner intends to include in the foreign refinery’s benzene compliance calculations under § 80.1240 or credit calculations under § 80.1275 and does include in these calculations when reported to EPA.

(6) *Non-Certified Benzene-FRGAS* means Benzene-FRGAS that is not Certified Benzene-FRGAS.

(b) *Baseline for Early Credits.* For any foreign refiner to obtain approval under the benzene foreign refiner program of this subpart for any refinery in order to generate early credits under § 80.1275, it must apply for approval

under the applicable provisions of this subpart.

(1) The refiner shall follow the procedures specified in §§ 80.1280 and 80.1285 to establish a baseline of the volume of gasoline that was produced at the refinery and imported into the United States during the applicable years.

(2) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to correct this deficiency after a request for more information, EPA will not assign an individual refinery baseline.

(c) *General requirements for Benzene-FRGAS foreign refiners.* A foreign refiner of a refinery that is approved under the benzene foreign refiner program of this subpart must designate each batch of gasoline produced at the foreign refinery that is exported to the United States as either Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Benzene-FRGAS, the foreign refiner must meet all requirements that apply to refiners under this subpart.

(2) In the case of Non-Certified Benzene-FRGAS, the foreign refiner shall meet all the following requirements:

(i) The designation requirements in this section;

(ii) The recordkeeping requirements in this section and in § 80.1350;

(iii) The reporting requirements in this section and in §§ 80.1352 and 80.1354;

(iv) The product transfer document requirements in this section;

(v) The prohibitions in this section and in § 80.1358; and

(vi) The independent audit requirements in this section and in § 80.1356.

(3)(i) Any foreign refiner that generates early benzene credits under § 80.1275 shall designate all Benzene-FRGAS as Certified Benzene-FRGAS for any year that such credits are generated.